

AMENDED IN ASSEMBLY JULY 10, 2003

AMENDED IN ASSEMBLY JULY 2, 2003

AMENDED IN SENATE JUNE 4, 2003

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 704

Introduced by Senator Florez

*(Coauthors: Assembly Members Jerome Horton, La Malfa, Levine,
Reyes, Richman, and Wolk)*

February 21, 2003

An act to repeal Part 3 (commencing with Section 1101) of the Food and Agricultural Code, and to add Section 41606 to the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 704, as amended, Florez. Air quality: agricultural burning.

(1) Under existing law, each air pollution control district and air quality management district is authorized to establish a permit system that requires, except as specified, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants, the person obtain a permit from the air pollution control officer of the district.

Existing law *until January 1, 2004*, establishes the Agricultural Biomass-to-Energy Incentive Grant Program, which permits air districts, as defined, to apply to the Technology, Trade, and Commerce Agency to receive grants to provide incentives to facilities that convert qualified agricultural biomass, as defined, to fuel.

Under the Public Utilities Act, the Public Utilities Commission requires electrical corporations to identify a separate rate component to fund in-state operation and development of existing and new and emerging renewable resources technologies. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to support in-state operation and development of existing and new and emerging renewable resources technologies. Existing law also requires the State Energy Resources Conservation and Development Commission (Energy Commission) to transfer funds collected for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund, a continuously appropriated fund, to accomplish these purposes.

This bill would *repeal the Agricultural Biomass-to-Energy Incentive Grant Program, and instead, would require the Energy Commission, in consultation with the districts of the San Joaquin and Sacramento Valleys and the California Environmental Protection Agency, and upon determining the project is eligible for funding, to provide incentives to a facility, as defined.*

(2) This bill would require the Energy Commission, upon determining the project is eligible for funding pursuant to the Renewable Resource Trust Fund or upon appropriation in the annual Budget Act, to allocate \$6,000,000 from that fund for the 2003–04 fiscal year, to provide incentives to a facility, to increase ~~their~~ *its* utilization of qualified agricultural biomass.

~~(3) This bill would make certain findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Part 3 (commencing with Section 1101) of the*
2 *Food and Agricultural Code is repealed.*

3 SEC. 2 Section 41606 is added to the Health and Safety Code,
4 to read:

5 41606. (a) It is the intent of the Legislature to reduce air
6 pollution from open field burning in the ~~San Joaquin and~~

~~Sacramento Valleys~~ state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the ~~valleys state~~.

(b) For purposes of this section:

(1) “Qualified agricultural biomass” means agricultural residues that historically have been open-field burned in the ~~San Joaquin or Sacramento Valleys, or the areas proximate to the San Joaquin or Sacramento Valleys, as determined by the respective districts of the San Joaquin or Sacramento Valleys jurisdiction of~~ *the air district from which the agricultural residues are derived, as determined by the air district*, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) “Facility” means any ~~site proximate to the San Joaquin or Sacramento Valleys, as determined by the respective districts of the San Joaquin or Sacramento Valleys, California~~ site that meets all of the following criteria:

(A) As of July 1, 2000, converted and continues to convert qualified agricultural biomass to energy, or that operated prior to July 1, 2000, converting qualified agricultural biomass to energy, was closed for a period of time but maintained all applicable air quality permits during that closure, and is ready to reopen on or before June 30, 2001, and, in both cases, the conversion results in lower oxides of nitrogen (NO_x) emissions than would otherwise be produced if burned in the open field during the ozone season, as determined by the air district in which the site operates.

(B) Does not produce electricity for sale to a public utility pursuant to a contract with that public utility, or, if the site does produce electricity for sale to a public utility pursuant to a contract with that public utility, the site does not qualify for fixed energy prices established prior to June 30, 2000, under the terms of that contract at the time the application for the grant is made.

(C) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit.

(D) Burns more than 50 percent qualified agricultural biomass or demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A “significant net increase” means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the effective date of this section.

(c) (1) The State Energy Resources Conservation and Development Commission, in consultation with the ~~districts of the San Joaquin and Sacramento Valleys and the California~~ Environmental Protection Agency, shall upon determining the project is eligible for funding, provide incentives to a facility, consistent with this section.

(2) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive funded through electricity surcharges, *except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.*

~~SEC. 2.—~~

~~SEC. 3.~~ Upon determining the project is eligible for funding under the Renewable Resource Trust Fund, or upon appropriation in the annual Budget Act, the State Energy Resources Conservation and Development Commission shall allocate six million dollars (\$6,000,000) from that fund for the 2003–04 fiscal year, to provide incentives to a facility, as defined in Section 41606 of the Health and Safety Code, to increase ~~their~~ *its* utilization of qualified agricultural biomass as provided in Section 41606 of the Health and Safety Code.

~~SEC. 3.—The Legislature finds and declares that, due to the unique circumstances involving the burning of agricultural waste in the San Joaquin and Sacramento Valleys, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.~~